a precise authority to justify a statute seeking to impose the same limitations in respect to cutting down shade trees planted within the private property lines of the highway.

While it is probably true that no case in the United States has as yet gone quite to the extent of justifying an exercise of the regulation of private property solely in the interests of beauty, expressions are not lacking in numerous decisions recognizing that the law will ultimately take this step.[8] A great difficulty hitherto has been the want of proper administrative machinery in our law. A justice of the peace or a jury of farmers or merchants can scarcely be trusted to determine whether a structure is or is not unsightly. On the other hand, the American tradition, inherited from the days of the struggle between prerogative and common law, has been distinctly hostile to administrative boards, such as are indispensable for the proper carrying out of plans to secure beautiful surroundings. Moreover, statutes and ordinances have been too broadly expressed. For example, the Chicago ordinance which forbade advertising matter within a certain distance of public parks would have prevented an owner from placing a sale or rental notice on his house.[9] Even Berlin, which has gone beyond what any American community would endure in the matter of regulation of private property for advertising purposes, has carefully preserved the owner's or lessee's right to post or hang advertisements affecting his own interests.[10] There is little reason to doubt that when the material values inherent in more beautiful surroundings shall have been established by objective tests, such as have been used to justify the workmen's compensation, the eight hour day, and liquor legislation, the courts will be found quite ready to sustain reasonable legislation based wholly on aesthetic considerations.[11]

O. K. M.

WILLS: VALIDITY OF TYPEWRITTEN HOLOGRAPHIC INSTRUMENT. —Of the several interesting points raised recently concerning holographic wills, that in issue in *Estate of Dreyfus*[1] probes

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[8] A case which has gone far in this direction is Attorney General v. Williams (1899), 174 Mass. 476, 55 N. E. 77. See also, Wilbur Larremore, Public Aesthetics, 20 Harvard Law Review, 35; Ely, Property and Contract in their Relation to the Distribution of Wealth, ii, 783-784.

[9] Haller Sign Works v. Physical Culture Training School (1911), 249 Ill. 436, 94 N. E. 920.

[10] W. J. B. Byles, Foreign Law and the Control of Advertisements in Public Places, 7 Journal Society of Comparative Legislation (N. S.) 324-325.

[11] In addition to the authorities cited in the above notes, for recent discussions see Ernst Freund, Standards of American Legislation (1917), pp. 112-116; Henry T. Terry, The Constitutionality of Statutes Forbidding Advertising Signs on Property (1914), 24 Yale Law Journal, 1. Compare with the principal case, Altpeter v. Postal Cable Company (Feb. 17, 1917), 24 Cal. App. Dec. 274, 164 Pac. 35, with respect to property rights in trees upon highways.

most deeply the true theory of the holograph. In that case the body of the will was typewritten; the Supreme Court held the instrument invalid, as not being "entirely written, dated and signed by the hand of the testator."[2] The court, admitting that it might be "by the hand of the testator", held that it was not "written" within the meaning of the code section, typewriting being "essentially a process of printing". The court is endeavoring to carry out the reason of the code section, which it considers to be the prevention of forged wills. No mention is made of the fact that the legislature at the same time provided that the words "writing" and "written" should include "printing" and "printed",[3] or that the same section reads today, "writing includes printing and typewriting."

The case appears to be unique in this country.[4] A case decided in Quebec,[5] under a statute similar to ours,[6] reaches a decision contrary to that in the principal case. The interpretation of the definition in the German Civil Code[7] however, which also is essentially the same as ours, agrees with the interpretation of the California court.[8]

It is always unsatisfactory to assume that the legislature could not have meant what it has said. Is it then necessary to hold that a will typewritten by the testator is not one written by him? There appear to be two theories as to the *raison d'être* of the holograph. One is that adopted in the principal case, namely the prevention of forgery. The other is the theory that the will must be the exclusively personal act of the testator in order that he may know directly every word that goes into the will and may avoid imposition upon himself at the time of its making.

Is a handwritten document so much harder to forge than a typewritten one? The court's assumption in the affirmative is not unanimously concurred in. The decision in the Aird case[9]

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[1] (June 9, 1917), 53 Cal. Dec. 803, 165 Pac. 941.

[2] Cal. Civ. Code, § 1277.

[3] Cal. Civ. Code, § 14, as originally enacted.

[4] There is no other case interpreting in this respect a code section similar to ours. In Arkansas and North Carolina the statute uses the word "handwriting," but the great majority of the legislative definitions do not directly prescribe the means of writing. The definition in the Code Napoleon (which is in fact considerably older than that compilation) has been substantially copied, not only in Louisiana and in this state, but also in Idaho, Montana and Nevada. Most of the other states allowing holographic wills provide that "unless wholly written by the testator" the will must be witnessed. The Tennessee statute uses the words "written by him" (testator) but later requires three witnesses to the "handwriting."

[5] In re Aird, 28 Que. Super. Ct. 235.

[6] Civil Code, § 850, the words being "wholly written and signed by the testator." There is also a provision that the words "written" etc. include the words "printed" etc. or "otherwise traced or copied." Civil Code 17, § 12.

[7] German Civil Code, § 2231.

[8] Note to § 2231, Chung Hui Wang's English translation. Note to same section, Bufnoir et al., Code Civil Allemand.

[9] Supra, n. 5.

considers a typewritten forgery the harder of the two to execute successfully. Doubtless the microscope and the enlarging camera have made them both of great difficulty when submitted to modern scientific examination. But the ordinary will is not submitted to such examination; and there are plenty of rogues who can imitate a hand in a way to deceive the average witness familiar with the handwriting. It would seem that in the ordinary case, where experts are not called, the requirement of a handwritten document does not serve the purpose attributed to it by the court.

The second theory lays no weight upon the difficulty of proving the will to have been made by the testator. That is for the proponent to do if he can. As our definition is taken from the French law, we have open to us the body of French comment upon it. Much of this is consistent with the second theory only. Emphasis is constantly placed, not on the word "written", but on the word "entirely".[10] A host of wills sanctioned by the French commentators could not be proved from the handwriting, but only by a witness who saw the will written. A will written in the system of perforations employed by the blind is considered valid.[11] Nothing could be easier to forge, or harder to prove by the "handwriting". A will printed with a pen, as a child would do, is good. Neither paper nor ink is necessary. A writing scratched on glass with a diamond, written on a wall with a piece of coal, or on a slate with a stone, may be valid as a will, if proved to have been done entirely by the testator.[12] It must not be forgotten that it is the proponent of the will who must establish its genuineness. A holographic will may be proved by one who saw the writing executed, as well as by identification of the handwriting.[13] It could scarcely be contended that a will, conclusively proved to have been handwritten by the testator, would be invalidated by the fact that the writing did not resemble his usual hand. A disguised hand,[14] or one altered by physical weakness, is as much "written" and as much "by the hand of the testator" as one penned in the testator's accustomed handwriting.

In view of the above facts, it seems inexpedient to hold that the legislature, in providing that writing should include typewriting, did not mean the provision to apply to holographic wills.

A. R. R.

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[10] "Le testament olographe . . . . est l'oeuvre exclusivement personnele du testateur." Labori, Repertoire, s. v. "Testament," § 39.

"Quelle que soit l'écriture employée, il suffit qu'elle soit de la main du testateur." Beaudry-Lacantinerie, "Testament", Vol. 1, No. 1902.

[11] Beaudry-Lacantinerie, "Testament," Vol. 1, No. 1902. Also Huc, Vol. 1, No. 270.

[12] See generally on the subject of the French law, In re Aird, supra, n. 5.

[13] Cal. Code Civ. Proc. §§ 1309, 1940.

[14] The old case of Hannah v. Peake (1819), 2 Marsh. 133, holds valid a holographic will in a disguised hand, the court saying, "The requisition of the statute is not that the will shall be in the handwriting of the testator, but that it shall be written wholly by himself."